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REMARKS

Per your request

*Attached are OP's comments.
OMS did not have comments.*

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Room No.—Bldg.

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OPTIONAL FORM 41 (Rev. 7-76)

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FPMR (41 CFR) 101-11.206

*U.S.G.P.O.: 1983 - 421-529/320

OP-86-1241

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MEMORANDUM FOR: SA/LD/OCA

FROM: Robert W. Magee
Director of Personnel

SUBJECT: H.R. 4300 - The Proposed "Parental and Medical Leave Act of 1986," and H.R. 2020 - The Proposed Parental and Disability Leave Act of 1985

REFERENCE: Your Memorandum for DDA, D/PERS, DD/OP/PA&E, and C/ALD/OGC, dated 20 March 1986, OCA 86-0857

1. We have reviewed the subject bills and have a number of comments.

2. Before addressing certain specific provisions of these bills, we would note that the Agency already has the discretionary authority to and in fact often does grant varying amounts of annual leave and/or leave without pay (LWOP) to its employees for "parental" purposes, and annual leave, sick leave, and/or LWOP for pregnancy, temporary disability or illness. Also, employees already may elect to continue their participation in the Federal Employees' Health Benefits Program during periods of LWOP up to one year, upon payment of the necessary premiums. Thus, to the extent the Agency is bound as a matter of law to follow either subject bill (which we understand would not be the case with H.R. 4300 but would be the case with H.R. 2020), the only substantial changes would be that the Agency would be required to grant up to a certain prescribed minimum amount of unpaid leave to employees for "parental" purposes or temporary disability/ medical reasons. We do not believe that such a requirement would have any major adverse impact on Agency staffing or operations. In addition, for your background, you should be aware that the DDCI has approved an OP policy initiative to allow employees who have exhausted their annual leave, but need more leave to care for sick family members, to borrow annual leave in excess of the amount they will accrue in the given leave year and to repay the advance over a four-year period rather than at the end of the given leave year. This policy proposal is being submitted to the HPSCI and the SSCI before it is put into effect.

3. Although we have no objection to the basic substance of these bills, we do have problems with certain specific provisions of each.

4. With respect to Title II of H.R. 4300 (which would apply to executive agencies generally and which the Agency might follow as a matter of policy), we object to proposed new Section 6334 of Title 5, U.S. Code, which would guarantee an employee who uses parental leave or temporary medical leave

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restoration to the position held immediately before the leave. It may not be practicable or further the Agency mission in all instances to restore an employee after 26 (or 18) workweeks' absence to the exact position held prior to the absence. Accordingly, we think that proposed Section 6334 should be amended to entitle the employee to restoration to the position held or a position of equivalent grade, pay, employment benefits, and terms and conditions of employment. Also, Section 304(c) of H.R. 4300 states that the head of an agency "shall furnish" such pertinent information to the Commission on Paid Parental and Medical Leave as it may request. We wish to be sure that classified information could be withheld from the Commission under existing Agency authorities, and if not, that protection of such information be written into the bill (or its legislative history) - perhaps by adding a "to the extent permitted by law" provision to Section 304(c).

5. With regard to H.R. 2020, again we wish to be sure that classified information could be protected in the course of any investigation by the Secretary of Labor under Section 108 of the Act of possible violations of the Act or any implementing regulations or orders. We note in this connection that the Secretary's investigative authority includes subpoena power pursuant to Section 108(c) of the Act. We also are concerned with the broad authority of the Secretary under Section 108(a) to disseminate such investigative information to any person affected and to any Federal department or agency. Should existing Agency authorities to protect intelligence information not be sufficient in this respect, we would ask that adequate safeguards be written into any law involving this subject.

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